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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE INCRETIN-BASED THERAPIES
PRODUCTS LIABILITY LITIGATION

MDL Case No. 13md2452 AJB

**PLAINTIFFS' UNOPPOSED MOTION
FOR LEAVE TO FILE FIRST
AMENDED SHORT FORM
COMPLAINT**

Case No. 3:14-cv-00990-AJB-MDD

This Document Relates only to:

Sean Smith, as POA for Patricia Smith, and
Patricia Smith, Sean Smith, Kelley Smith
Jackson and Colin Smith Individually and as
Surviving Heirs of Henry S. Smith, Deceased,
and the Estate of Henry S. Smith, Deceased.

Plaintiffs

v.

Amylin Pharmaceuticals, LLC and Eli Lilly and
Company.

Defendants

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE
TO FILE FIRST AMENDED SHORT FORM COMPLAINT**

Plaintiffs, by and through their undersigned counsel, pursuant to Fed. R. Civ. P.

15(a)(2), hereby respectfully request entry of an Order granting this Unopposed Motion for
Leave to File First Amended Short Form Complaint. As grounds, Plaintiffs state as follows:

1. Plaintiffs desire to amend the case caption to reflect the decedent and all of the
decedent's heirs. On April 21, 2014, Plaintiffs filed their Short Form Complaint. Due to a

1 technical error a portion of the Plaintiffs' section was not visible on the Short Form Complaint;
2 however, the civil cover sheet listed the Plaintiffs' section correctly.

3 2. Additionally, Plaintiffs have recently discovered that decedent used Victoza
4 prior to his death. Plaintiffs wish to include Novo Nordisk Inc. as a defendant in this action.

5 3. Pursuant to Fed. R. Civ. P. 15(a)(2), a party may amend its pleading only with
6 the opposing party's written consent or the Court's leave.
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8 4. Plaintiffs have conferred with all Defendants via electronic mail regarding the
9 filing of Plaintiffs' First Amended Short Form Complaint and Defendants have no objection to
10 the filing of Plaintiffs' First Amended Short Form Complaint.

11 5. Accordingly, in full compliance with Fed. R. Civ. P. 15(a)(2), all parties in this
12 case have now given consent to the Plaintiffs for the filing of the First Amended Short Form
13 Complaint (attached as Exhibit A).
14

15 WHEREFORE, Plaintiffs, on behalf of themselves, and with the consent of all parties,
16 respectfully request that this Honorable Court:

- 17 1. Grant this Unopposed Motion for Leave to File First Amended Short Form
18 Complaint;
19 2. Deem the First Amended Short Form Complaint attached as Exhibit A as filed;
20 and
21 3. Direct the Clerk to docket the First Amended Short Form Complaint as filed and
22 correct the caption of this action.
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1 Dated: October 14, 2014

2 Respectfully submitted,

3 s/ Neil D. Overholtz

4 Neil D. Overholtz (FL #188761)

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12 *Attorney for Plaintiffs*

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on October 14, 2014, I electronically filed the foregoing
15 document with the Clerk of the Court using CM/ECF. I further certify that the foregoing
16 document is being served this day on all counsel of record via transmission of Notices of
17 Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel
18 or parties who are not authorized to receive electronically Notices of Filing.

19 s/ Neil D. Overholtz

20 Neil D. Overholtz